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SUPREME COURT, U.S.

No. 79-6825

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

WILL CATER, JR., Appellant

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee

APPELLANT'S REPLY MEMORANDUM

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The gist of the State's argument is that the Illinois juvenile transfer statute is constitutional because it is patterned after the District of Columbia juvenile transfer act which was reviewed by this Court in Kent v. United States, 383 U.S. 541 (1966). What the State ignores, however, is that Kent did not have before it the issues that are argued in the instant case. In Kent the defendant contended "that the waiver is defective because no hearing was held; because no findings were made by the Juvenile Court; because the Juvenile Court stated no reasons for the waiver; and because counsel was denied access to the Social Service file which presumably was considered by the Juvenile Court in determining to waive jurisdiction". Kent v. United States, 383 U.S. 541, 552

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*In footnote 2 of the appellant's original jurisdictional statement (page 12) it was incorrectly stated that the adopted Juvenile Justice Standards required a finding that there be "probable cause to believe the juvenile committed an offense that if committed by an adult, would be punishable by death or by imprisonment for more than twenty years". The underlined portion should read: "by death or by imprisonment for more than five years".

(1966). The issues concerning the burden of proof and the relative weight to be given the six statutory factors the juvenile court must consider were not at issue in Kent.

The State cites United States ex rel Pedrosa v. Sielaf, 434 F. Supp 494 (N.D.Ill, 1977) affirmed at 598 F2d 1064 (7th Cir. 1979) as the only federal court case which has considered the constitutionality of the Illinois transfer statute. (State's Motion to Dismiss p.5) While it is true that the cited decision upheld the constitutionality of the Illinois juvenile transfer statute, the exact nature of the attack upon the statute was quite different from that at bar. In United States ex rel Pedrosa v. Sielaf, it was argued that the statute was unconstitutionally vague. No argument was made, as in the instant case, that due process mandated an articulated standard of proof.

It is further argued by the State that a transfer hearing is not adversarial in nature, but rather a dispositional type proceeding. This was the conclusion reached by the Illinois Supreme Court in People v. Taylor, 76 Ill. 2d 289, 391 N.E. 2d 366 (1979). What the State and the court in Taylor ignore, is that unlike the dispositional function, the trial judge at the transfer hearing has heard no previous evidence concerning the case and does not have before him a finding of guilt. A burden of proof is necessary at these proceedings because factual determinations are required. The burden is necessary to minimize error. (See Jurisdictional Statement pp. 14-15).

Furthermore, to argue that a juvenile transfer hearing is not adversarial in nature is to ignore reality. The potential consequences of a transfer to adult court are much more severe than the maximum sanctions available to the juvenile court in a

delinquency proceeding. (See Jurisdictional Statement p. 10). If anything the transfer hearing is the most adversarial proceeding conducted by a juvenile court.[1]

With respect to the issue of burden of proof, the State argues that since the "juvenile transfer procedure is only a hearing the standard of evidence should not be the same as required at trial" (p. 7). First, appellant does not argue that the standard of proof must be the same as that at a criminal trial. Appellant contends that there must be some articulated burden of proof and that a clear and convincing standard would be most appropriate considering the interests involved. Moreover, the State's reliance on the fact that the juvenile transfer procedure is "only a hearing" as opposed to a criminal trial is not persuasive in light of the fact that Addington v. Texas, 441 U.S. 418 (1979) and United States v. DiGileo, 538 F2d 972, 988 (CA3, 1976) also involved "mere" hearings.

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[1] As noted in the Jurisdictional Statement (p. 10-11), there are several severe consequences attendant upon a transfer of a juvenile. An additional consequence, illustrated in the case of People v. Taylor, 76 Ill. 2d 289, 291 N.E. 2d 366, 375 (1979), involves a situation where the minor commits an offense at age 16, is transferred to adult court but not sentenced as an adult until age 17. The 17 year old is then sentenced to an adult prison where he is subjected to the hardening influence and possible abuse from older fellow inmates. However, the juvenile who remains within the juvenile system, even if his dispositional (sentencing) hearing is held after he reaches age 17, may not be sentenced to an adult institution. Ill. Rev. Stat. 1977, Ch. 37, §705-10.

In summary, the questions presented by this appeal have not been implicitly or explicitly decided by this Court's previous decisions. Furthermore, a juvenile transfer hearing involves factual determinations in an adversarial setting and thus due process requires the existence of an articulable standard of proof. Since the questions presented are substantial, plenary consideration is required for their resolution. Alternatively, appellant again requests that this Court summarily reverse the judgment below.